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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/612,137	07/02/2003	Ellen Waldman	WALDMAN-2	3325

7590 05/26/2004

BENJAMIN APPELBAUM, Ph.D.  
Attorney-At-Law  
27 Bennington Dr.  
Flanders, NJ 07836

EXAMINER
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MORAN, KATHERINE M

ART UNIT	PAPER NUMBER
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3765

DATE MAILED: 05/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/612,137	<b>Applicant(s)</b> WALDMAN, ELLEN	
	<b>Examiner</b> Katherine M Moran	<b>Art Unit</b> 3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 02 July 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION*****Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-6, 8-15, 17, and 18 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7 of U.S. Patent No. 6,397,403 to Waldman, in view of Ferguson et al. (U.S. 5,115,517). Waldman recites the feature of the neck member. However, Walker doesn't teach a head covering member comprising an elongated body having a front end, a back end having a bottom surface, with the head covering member joined to the neck member upper region by attachment of the head covering member proximate its bottom surface. Waldman also doesn't teach that the bottom surface of the head covering member is not coextensive with the neck member body. Ferguson teaches a neck member with a head covering member attached as outlined below. It would have been obvious to provide the neck member of Waldman with the head covering member as taught by Ferguson, because provides an added degree of protection to the wearer of the neck garment.

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3. Claims 7 and 16 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7 of Waldman, U.S. Patent '403/Ferguson '517 in view of Gianola '757. Waldman, when viewed with Ferguson, discloses the elements of claims 7 and 16 substantially as claimed. However, Waldman doesn't teach a head covering member further comprising a second seam being formed along the front edge. Gianola teaches a head covering member 15 with a second seam (shown by stitching lines in Figures 1-5), formed along the front edge of the head covering member. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to form the head covering member with a second seam formed along the front edge, because this configuration allows for a head covering which better conforms to the shape of the wearer's head.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-6, 8-15, 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Waldman (U.S. 6,397,403) in view of Ferguson et al. (Ferguson '517). Waldman '403 discloses the invention substantially as claimed. Waldman teaches a garment comprising a neck member 10 having a body, comprising two ends 16, 18, the ends being joined by a zipper means 30 for fastening, the zipper means not being coextensive with the ends, the zipper means attached to the body proximate one of the ends, forming a flap 34, the flap positioned beneath the

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means for fastening, the body further having an upper region, and the zipper means being attached to the neck member at an angle of about 45 degrees. The zipper means is further attached to the neck member body proximate the second end forming a second flap 36, the second flap beneath the means for fastening. Waldman also teaches a means for connecting, the means for connecting joining the neck member ends at a region where the neck member ends are not connected by the means for fastening, such that when the means for fastening is moved to an open position, the garment remains open when worn by the wearer. However, Waldman does not teach that the garment includes a head covering member comprising an elongated body having a front end, a back end having a bottom surface, with the head covering member joined to the neck member upper region by attachment of the head covering member proximate its bottom surface. Waldman also doesn't teach that the bottom surface of the head covering member is not coextensive with the neck member body. Ferguson teaches a garment comprising a head covering member 14 comprising an elongated body having a front end, a back end having a bottom surface 28, with the head covering member joined to the neck member 12 upper region 20 by attachment of the head covering member proximate its bottom surface 28. Figure 1 shows that the bottom surface 28 is not coextensive with the neck member body. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the neck member of Waldman with the hood covering member joined to the neck member upper region by attachment of the head covering member proximate its bottom surface, so that Waldman's garment has greater versatility and protective qualities.

6. Claims 7 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Waldman/Ferguson as applied to claims 1 and 10 above, and further in view of Gianola (U.S.

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2,839,757). Waldman discloses the invention substantially as claimed. However, Waldman does not teach a head covering member further comprising a second seam being formed along the front edge. Gianola teaches a head covering member 15 with a second seam (shown by stitching lines in Figures 1-5), formed along the front edge of the head covering member. Forming the head covering member of multiple pieces ensures that the pieces are cut and assembled in such a way that the head covering member is shaped to better conform to the wearer's head. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide Waldman's head covering member with a second seam formed along the front edge of the head covering member, so that the head covering can be assembled in a curved fashion which conforms well to the wearer's head.

### *Conclusion*

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Rautenberg (U.S. 787,945), Michaelis (U.S. 2,686,317), Hayden (U.S. 4,495,660), and Nevins (U.S. 5,251,336) teach relevant prior art.

Any inquiry concerning this communication or earlier communications should be directed to Primary Examiner Katherine Moran at (703) 305-0452. The examiner can be reached on Monday-Thursday from 8:30 am to 6:00 pm, and alternating Fridays.

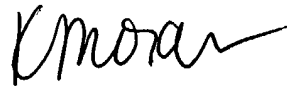
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert, may be reached at (703) 305-1025. The official and after final fax number for the organization where this application is assigned is (703) 872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kmm

May 17, 2004

A handwritten signature in black ink, appearing to read "K Moran", with a stylized flourish at the end.

Katherine Moran

Primary Examiner, AU 3765